



Department of Health and Mental Hygiene

Board of Health

Notice of Adoption of Amendments to Article 161 of the New York City Health Code

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Article 161 of the New York City Health Code was published in the City Record on March 25, 2016 and a public hearing was held on May 10, 2016. No testimony or comments were received. At its meeting on June 7, 2016 the Board of Health adopted the following resolution.

Statement of Basis and Purpose

Statutory Authority

These amendments to the New York City Health Code (the “Health Code”) are authorized by sections 558 and 1043 of the New York City Charter (the “Charter”). Sections 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters to which the authority of the New York City Department of Health and Mental Hygiene (the “Department”) extends. Section 1043 grants the Department rulemaking authority.

Background

The Department’s Bureau of Veterinary and Pest Control Services enforces Health Code Article 161 pertaining to the control of animals in the City. Article 161 currently requires pet shops other than those selling dogs and cats to have permits and to comply with other provisions of the Health Code. The N.Y. State Agriculture and Markets Law Article 26-A (“Care of Animals by Pet Dealers”) formerly prohibited local regulation of “pet dealers,” defined in such State law as an entity that sells more than nine animals (dogs and/or cats) to the public per year. See Agriculture and Markets Law §§400 subdivisions (1) and (4) and 400-a. Effective January 10, 2014, this law was amended and a new §407 authorizes local regulation of these entities, provided that the local law is no less stringent than Article 26-A or effectively results in banning of all sales of dogs or cats “raised and maintained in a healthy and safe manner.”

On January 17, 2015, Local Law 5 of 2015 was enacted, and on June 2, 2015 was further amended by Local Law 53. Read together, Title 17 of the New York City Administrative Code now authorizes the Department to regulate pet shops selling dogs and cats, and Administrative Code § 17-372 requires such pet shops to hold permits issued by the Commissioner of the Department. The law was to have become effective June 1, 2015, but was stayed on that date as a result of a challenge in the U.S. Court for the Eastern District of New York by certain pet shops and animal dealers. On October 20, 2015 it was upheld by the court and is therefore now in effect. An appeal filed after publication of the notice of intention to amend the Health Code is currently pending.

The Board of Health is amending provisions of Article 161 that explicitly state that they are not applicable to sales of dogs and cats by pet dealers regulated under Article 26-A of the Agriculture and Markets Law, since pet shops selling these animals are again being regulated by the Department. Pet shops selling only animals other than dogs and/or cats continue to be regulated by the Department and none of these amendments substantively affect those pet shops. In conjunction with these amendments,

the permit fees and expiration dates set forth in Health Code Article 5 are also amended to be consistent with the fees set forth in the new Administrative Code §17-374.
The resolution is as follows.

Shall and must denote mandatory requirements and may be used interchangeably.

New text is underlined; deleted material is in [brackets].

RESOLVED, that the definition of “pet shop” in §161.02 of Article 161 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, is amended, to be printed together with explanatory notes to read as follows:

§161.02 Definitions.

Pet shop means a facility other than an animal shelter where live animals are sold, exchanged, bartered, or offered for sale as pet animals to the general public at retail for profit. [A pet shop shall not mean a pet dealer exclusively selling dogs and cats that is subject to Article 26-A of the Agriculture and Markets Law. However, a pet shop where animals other than, or in addition to, dogs and cats are sold shall hold a pet shop permit issued by the Commissioner and shall comply with all other applicable provisions of this Code and other applicable law.]

Notes: The definition of “pet shop” was amended by resolution adopted by the Board of Health at its June 7, 2016 meeting to delete exclusion of “pet dealers” previously exclusively regulated under Article 26-A of the Agriculture and Markets Law.

RESOLVED, that paragraph (1) of subdivision (a) and subdivision (f) of §161.09 of Article 161 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, are amended, to be printed together with explanatory notes to read as follows:

§161.09 Permits to keep certain animals.

(a) *Permit required.*

(1) No person shall operate a pet shop, grooming parlor, boarding kennel or training establishment for small animals whose possession is not prohibited by §161.01 of this Article, without a permit issued by the Commissioner [except that a pet shop that exclusively sells dogs and cats and is regulated by Article 26-A of the Agriculture and Markets Law, or successor law, shall not require a permit issued by the Commissioner].

* * *

(f) *Small animal handling course required.* No person who is charged with the supervision of a pet shop or business for the sale or offer for sale of dogs, cats or other small animals, or the boarding or grooming

of small animals, or animal training, or similar type of operations, shall engage or be employed in such capacity unless he or she obtains a certificate indicating the successful completion of a course, acceptable to the Department, in the care and handling of such animals. [Such certificate shall not be required for persons who are pet dealers who exclusively sell dogs and cats, in accordance with Article 26-A of the Agriculture and Markets Law.]

Notes: Paragraph (1) of subdivision (a) and subdivision (f) of §161.09 were amended by resolution of the Board adopted at its meeting on June 7, 2016 to delete exclusion of “pet dealers” previously exclusively regulated under Article 26-A of the Agriculture and Markets Law.

RESOLVED, that the table of permits and permit fees in subdivision (a) of §5.07 of Article 5 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, is amended, to be printed together with explanatory notes to read as follows:

§5.07 Expiration dates; fees.

(a) Applications for permits and for renewal thereof shall be accompanied by payment of fees prescribed by the following table. Permits shall expire and be renewed in accordance with the expiration date, if any, prescribed by such table:

Description of Activity [Under] <u>under</u> permit	Health Code or other Law Section Reference	Fee	Date Expiration
<u>ANIMALS:</u> Permit to operate a pet shop <u>without dogs and/or cats</u> , boarding kennel, training establishment for small animals or grooming parlor, where animals are kept overnight.	161.09(a)	\$70.00	December 31
<u>ANIMALS:</u> <u>Permit to operate a pet shop with dogs and/or cats.</u>	<u>Admin. Code § 17-374</u>	<u>\$300</u>	<u>Two years from date issued</u>

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Notes: Subdivision (a) was amended by Board of Health resolution adopted at its June 7, 2016 meeting to add a new permit fee for pet shops that sell dogs and/or cats pursuant to NYC Administrative Code §17-374.